APPENDIX I

Excerpts from the Voir Dire Examinations Of Prospective Jurors McCarley and Lewis In *People* v. *Arguello* (Tr. 308-311), Now Pending on Federal Habeas Corpus Sub Nom. *Arguello v. Nelson*, U.S.D.C., N.D. Cal. No. 47622.

[Mrs. McCarley]:

Q. All right. Do you have any conscientious objections against the imposition of the death sentence? A. Not if it is the law.

Q. Yes. But you, as an individual, do you feel that you could personally impose the death sentence in a proper case? A. In a proper case because it's the law.

Q. Well, are you in favor of the law or are you in favor of abolishing the death sentence?

Mr. Whelan: That's objected to as improper voir dire.

The Court: Objection sustained.

(By Mr. Meloche):

Q. Do you entertain any conscientious objections against the imposition of the death sentence yourself? A. Because it's the law, and because we live by this law, I feel that the death sentence in its proper place should be used as a tool of the law.

Q. But regardless of it being the law or not, as an individual do you have any personal conscientious objections against the imposition of the death sentence? A. If I could change the law, I would change the law.

Q. In other words, you do have a conscientious objection against the imposition of the death sentence, then, is that correct? A. Yes. I would prefer that it was not the law.

Mr. Meloche: Your Honor, at this time I would ask that she be excused for cause. She entertains a conscientious objection and I appreciate your candid statement Mrs. McCarley.

The Court: Is that true, Mrs. McCarley?

Mrs. McCarley: That's true.

The Court: You entertain a conscientious objection?

Mrs. McCarley: I would rather that it was not the law.

The Court: All right. You may be excused.

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[Mr. Lewis]:

Q. Do you have any objection to serving as a juror in this particular case? A. No.

Q. You are aware of the responsibilities involved? A. Yes.

Q. And you are willing to assume that responsibility? A. Only in an extreme case could I ever give the ultimate penalty; very extreme case. I would be inclined to be lenient, is what I mean.

Mr. Whelan: I didn't get the last.

The Court: She would be inclined to be lenient.

By the Court:

Q. Well, I take it, then, you have some conscientious scruples against the imposition of the death penalty? A. Yes, some. I could in a very extreme case, as I say.

Q. You would set up your own standard, though, of course? A. No, sir. If the person were proven, well, to be perfectly blunt not fit to live, I could; otherwise I could not.

Q. Well, again I will ask you: You do have some conscientious scruples against the imposition of the death penalty. A. Yes.

The Court: You may be excused.

APPENDIX II

Excerpt From the Voir Dire Examination Of Prospective Juror Timberlake, In *People v. Saterfield* (Tr. 83-85), Now Pending On Habeas Corpus, *Matter of Saterfield*, Cal. S.C. Crim. No. 11573.

The Court: Do you know of any reason why you couldn't sit as a fair and impartial juror in a trial of this nature?

Mr. Timberlake: Well, I have thought about four points, but, don't get me wrong, I want to serve and do my duty if I am chosen.

The Court: Do you have a quarrel with the death penalty?

Mr. Timberlake: No. That might be one of the points, but still I know it is the law, so I want to go along with the law.

The Court: Do you hesitate to apply that law?

Mr. Timberlake: No.

The Court: If you found, under the instructions. that it should be applied.

Mr. Timberlake: No.

The Court: In this particular case.

Mr. Timberlake: No.

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Q. . . . what are the remaining things? A. Well, one was two to three weeks; another one you brought up, the flu situation; I have a daughter at home with a fever, my Quaker background—

Mr. Enright: I will stipulate, your Honor—

The Court: I don't think you have to go any further.

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Mr. Riccardi: I would so stipulate, your Honor.

The Court: Thank you, Doctor. I know you want to do your duty, and you did by informing us of your Friend's belief. I don't think we can accept you on a jury involving a possible death penalty, but we thank you for coming forth with the information. You may be excused. Call another juror.

APPENDIX III

Excerpt From the Voir Dire Examination Of Prospective Juror Upchurch, in *People* v. *Schader* (Tr. 247), Appeal Pending, Cal. S. C. Crim. No. 9855.

By the Court:

Q. I still can't understand, Mrs. Upchurch, how the fact that you have children could possibly affect your judgment in the case. Do you have something else? A. No, your Honor. I was just thinking if it were my son.

Q. Almost everyone in this jury box has children. A. I know.

Q. And responsibilities, and—you indicating to the Court you might tend to favor these defendants because you have sons? A. I might.

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The Court: You will be excused, Mrs. Upchurch, and I think if you have that attitude, you'd best retire from jury service. If you have this emotional approach to things, you do not belong as a juror. So you will be permanently excused.

Mrs. Upchurch: All right. Thank you.